IN THE HIGH COURT OF UTTARAKHAND, AT NAINITAL.

Criminal Appeal No. 167 of 2007

(Old No. 1827 of 1986)

Yasphal Singh S/o Alam Singh,
R/o Waduk, Patwari Circle Bura,
Tehsil and District Chamoli .... Appellant.

Versus

State of U.P. ....Respondent.

Sri Yogesh Pancholiya, Advocate for the appellant.
Sri H. Pujari, learned Addl. G.A. for the State.

Dated: November 17, 2007

Hon'ble B.C. Kandpal, J.

This Criminal Appeal U/S 374 of the Cr.P.C. has been preferred against the judgment and order dated 18-6-1986, passed by the Sessions Judge Chamoli in S.T. No. 4 of 1986, convicting the appellant U/S 324 I.P.C. and sentencing him to undergo six months' R.I. and to pay a fine of Rs. 500/- and in default to undergo further R.I. for two months.

2. The prosecution case, in short, is that on 15-8-1984, Shivraj Lal, Patwari along with his peon Dhani ram had gone to village Baduk and completed the mutation proceedings with regard to a school building. Thereafter they went with Gaur Singh to see the land for regularization for which he had moved application. At about 7P.M. the same day when they were returning back and reached near the house of accused Yashpal Singh, he started abusing the Patwari and his peon and stated that why the

Patwari went on the spot without taking him there and he will kill him. Thereafter the accused went inside his house and came out with a sword. He tried to assault the Patwari Shivraj Lal with the sword but his peon Dhani Ram caught hold the hand of the accused and tried to snatch the sword from the hand of Yashpal Singh. In this scuffle the sword injured the arm of Dhani Ram. Due to this the shirt of Dhani Ram was torn and the blood started oozing out of the arm of Dhani Ram. On hearing the alarms Smt. Deveshwari also reached the spot and saw the incident. She also persuaded the accused that Patwari and his peon are the guest in the village and he should not behave them in that manner. Thereupon the accused threatened to kill her also. In the mean time Shivraj Lal Patwari and Dhani Ram peon entered the house of Sher Singh and remained there for the whole night. Accused Yashpal Singh remained outside the house of Sher Singh with his sword and was threatening the Patwari and his peon. Heowever, in the morning when Yashpal Singh had gone to his house, these two persons came out from the house of Sher Singh and ran away from that village. A report of the incident was lodged at Patwari Chauki Farkhet on 16.8.84 against the accused Yashpal Singh. Dhani Ram was medically examined. The police after completing the investigation submitted charge sheet U/S 307 I.P.C. against Yashpal Singh.

3- The C.J.M. Gopeshwar, vide his order dated 23-1-1986 committed the case to the Court of Sessions for trial. The accused was charged U/S 307 I.P.C. He pleaded not guilty to the charge.

4- The prosecution in order to prove its case, examined seven witnesses. P.W.1 Dr. Praveen Mishra, had medically examined the injured Dhani Ram. P.W.2, is Dhani Ram, the injured eye witness. P.W.3, Gaur Singh is the independent eye witness of the incident. P.W.4, Kunwar Singh is Patwari Farkhet where the F.I.R. was lodged. This witness has prepared chick F.I.R. Ext. Ka.4 on the basis of written report Ext. Ka.2. P.W.5, Smt. Deveshwari Devi is also the eye witness of the incident. P.W.6, Shivraj Lal is also the witness of fact and with whom the incident had happened. P.W.7, Diwani ram is the supervisor Qanoongo who had investigated the case.

5. The accused in his statement U/S 313 Cr.P.C. has shown his ignorance about the incident. He alleged that the Patwari and his peon did not come in front of his house. He alleged that he had given application against village Pradhan with regard to wages of N.R.P. Road and due to this reason the witnesses have deposed falsely against him. However, he did not adduce any evidence in his defence.

6- The learned Sessions Judge, on perusal of evidence and having heard learned counsel for parties, found the accused/appellant guilty U/S 324 I.P.C. and sentenced him to undergo six months R.I. and to pay a fine of Rs. 500/- and in default of payment of fine to further undergo R.I. for two months.

7- Feeling aggrieved, the appeal has been preferred before this Court.

8- I have heard the learned counsel for the appellant and learned Add. G.A. and perused the record.

9- The incident in the instant case is said to have taken place near the house of accused/appellant Yashpal Singh in village Baduk on 15-8-1984 at about 7P.M. when the Patwari Shivraj Lal along with his peon Dhani Ram was returning to his Chauki after completing the work of regularization and mutation in the village. According to the prosecution version accused Yashpal Singh suddenly started abusing the Patwari and his peon alleging that why the Patwari went on the spot without taking him with him. He will kill them. The accused suddenly went inside his house and came out with a sword. He tried to assault Shivraj Lal Patwari with the sword but his peon Dhani Ram caught hold the hand of Yashpal Singh and tried to snatch the sword from his hand. In this scuffle the sword injured the arm of Dhani Ram. On hearing the alarm witness Smt. Deveshwari Devi also reached the spot and saw the incident. Yashpal Singh also threatened her. Thereafter the Patwari and his peon went inside the house of Sher Singh and remained there whole night. The accused also remained standing outside the house of Sher Singh and when in the next morning the accused went to his house, both these witnesses ran away from the place.

10- The F.I.R., Ext. Ka.2 was lodged by P.W.6, Shivraj Lal on 16.8.84 at about 11 A.M. with Patwari Farkhet. This witness has stated that as soon as the accused went to his house they came out of the

house of Sher Singh and went to Patwari Farkhet where he prepared the F.I.R. and lodged it there. Therefore, plausible explanation has been given by this witness in lodging the F.I.R. with some delay.

11- The authenticity of the prosecution version is further supported by the medical evidence. The injured Dhani Ram was medically examined by P.W.1, Dr. Praveen Mishra, Medical Officer Incharge, P.H.C. Ghaat, at about 12 noon on 16-8-1984. He found following injury on the person of Dhani Ram:-

> "A 4cm long incised wound present on left arm obliquely 11cm below the upper border of left humeres. The margins of wound was well defined clean edge, the depth of wound was about ½ cm. The wound was spindle shaped. Margins of wounds were clean cut with smooth edges.'
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> In the opinion of the Medical Officer the injury was caused sharp cutting instrument. However the injury was simple. This witness has proved injury report Ext. Ka.1.

12- In this case the medical version is fully corroborated by the eyewitness account. P.W.2, Dhani ram injured and P.W.6, Shivraj Lal, Patwari have narrated the prosecution case. They have categorically alleged that in the beginning Yashpal Singh abused and threatened Shivraj Lal to kill and with dire consequences and when these persons reached the house of Sher Singh, he came there with a sword and tried to assault the Patwari. However

Patwari's peon Dhani ram caught hold the hand of Yashpal Singh due to which the sword hit the arm of Dhani Ram peon. Thereafter both these witnesses took shelter inside the house of Sher Singh whereas Yashpal Singh continued to remain outside the house of Sher Singh in the night with sword threatening them. The testimony of these two witnesses has been corroborated by the statement of P.W.3 Gaur Singh whose land regularization application was being examined that day by Patwari Shivraj Lal. This witness has fully corroborated the evidence of the Patwari Shivraj Lal and his peon Dhani Ram. Further P.W.5, Smt. Deveshwari Devi has also corroborated the prosecution version. The witness has specifically deposed that on hearing alarm she came out of her house and saw that Yashpal Singh was armed with a sword. He started to assault Patwari with sword and when his peon wanted to save him, the sword was hit on his shoulder.

13- Although, the accused has taken the plea that he had given application against village Pradhan Pertaining to wages of M.R.P. Road and due to this reason the witnesses have deposed falsely against him, but no effort was made to adduce any evidence in support of this allegation. No reason has been assigned from the side of defence as to why the Patwari, his peon, and other village people will falsely implicate the accused in the crime.

14- So far as the motive to commit the crime is concerned, the prosecution has come out with the case that accused Yashpal Singh used to think himself to be a big-man of the village and no work

should be done in the village without his presence and consultation. The patwari did not mutation work in the school premises in village Baduk and thereafter went to see the site on the land regularization application of Gaur Singh. He has not consulted the accused in the matter and that was the reason that the accused got annoyed and committed this crime.

15- After having considered the evidence adduced in the case and the facts and circumstances of the case, I am of the firm view that the prosecution has been successful in proving its case against the accused/appellant. I do not find any irregularity and infirmity in the finding recorded by the trial Judge while arriving at the conclusion, holding the accused/appellant guilty for an offence U/S 324 I.P.C.

16- So far as the quantum of sentence is concerned, learned defence counsel has submitted that the incident is very old and the accused has already remained in jail for a substantive period, therefore, in the interest of justice he be sentenced to the period of already undergone by him and to a suitable fine.

17- I find substance in the submission raised by the learned counsel for the appellant. The instant incident pertains to the year 1984. Perusal of record shows that the accused/appellant remained in jail for about 70 days in connection with this case, therefore, instead of sending him to jail, in the Interest of justice, the accused/appellant be

sentenced to the period already undergone by him and to a suitable fine.

18- The appeal is dismissed. The judgment and order passed by the trial court convicting the appellant is upheld.

19- However, the sentence awarded to the accused/appellant is modified to the extent that the accused/appellant is convicted U/S 324 I.P.C. and he is sentenced to the period already undergone by him, and a fine of Rs. 5,000/- instead of Rs. 500/-. In default of payment of fine, he shall undergo R.I. for six months. The impugned judgment and order accordingly stands modified.

20- Let the record be transmitted to the trial court for compliance.

(B.C. Kandpal, J.)

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